

District Court, Fremont County, Colorado 136 Justice Center Road Canon City, CO 81212	DATE FILED: April 19, 2023 9:20 AM
THE PEOPLE OF THE STATE OF COLORADO vs. BARRY MORPHEW, Defendant	<input type="checkbox"/> COURT USE ONLY <input type="checkbox"/>
Linda Stanley Eleventh Judicial District District Attorney, # 45298 District Attorney's Office 104 E. Crestone Ave Salida, CO 81201 Phone Number: (719)539-3563	Case No: D0222022CR000047 Div: 1 Courtroom:
PEOPLE'S RESPONSE TO THE DEFENSE MOTION TO STAY COURT ORDER OF APRIL 13, 2023, REQUEST FOR OPPORTUNITY TO BE HEARD, OBJECTION TO PUBLIC ACCESS OF SOME DOCUMENTS AND REQUEST FOR COURT TO RULE ON D-72 PRIOR TO ISSUING ANY ORDER FOR PUBLIC ACCESS	

COMES NOW, the People of the State of Colorado, by and through Linda Stanley, District Attorney for the Eleventh Judicial District, by and through her duly appointed Deputy District Attorney and respectfully asks this Honorable Court to deny the defense Motion to Stay Court Order or April 13, 2023, Request for Opportunity to be Heard, Objection to Public Access of Some Documents and Request for Court to Rule on D-72 Prior to Issuing Any Order for Public Access (Motion to Stay) and as grounds therefore states:

1. On May 6, 2021 the Defendant was brought before the Court on charges including the First Degree Murder of his wife, Suzanne Morphew. To date Ms. Morphew's remains have not been found. On September 17, 2021, after the Honorable Chief Judge Murphy found probable cause for the charges listed in the indictment, but declined to find proof evident presumption great, the Defendant was granted a bond that was quickly posted. On April 19, 2022 the People, feeling we were close to finding the victim's body, dismissed the case without prejudice. Although the defense objected to our dismissing the case without prejudice and wished the Court to dismiss with prejudice, the Court dismissed without prejudice.

2. After a case is dismissed, the Court's jurisdiction to decide issues is very limited. A Court may decide on the return of property (*See People v. Rautenkranz*, 641 P.2d 317 (Colo. App. 1982) and sealing of cases (*See C.R.S. 24-72-705*). The People could find no other instance of a court retaining jurisdiction after a dismissal and the defense has cited none.
3. Despite the apparent lack of jurisdiction, the defense wishes to request this Court to decide a substantive motion, namely whether the victim's statements may come in under CRE 807, after a case has been dismissed. The defense has made this request without citations or reference to any case or statutory law, instead relying on perceived ulterior motives for the People to file the motion in the first place. At the time of the People's filing of the motion, we simply wished to provide the defense and the Court as much notice as possible to be able to make a decision. That required the People to outline the statements we wished to enter into evidence and the reason it fit under CRE 807. Under Colorado Rules of Criminal Procedure, Rule 55.1(a), we filed the motion publicly, but also filed the exhibits, which contained the victim's statements, under seal. And when the defense requested that it not be made public until the Court decided on their motion D-71, the People did not object.
4. The defense also asks this Court to make a ruling under Crim.P. 55.1(7) and declare a time certain where the dismissal without prejudice converts to a dismissal with prejudice. First, Crim.P. Rule 55.1(7) simply does not apply at this time. Crim.P. 55.1(7), along with all of Crim.P. Rule 55.1 applies to pending criminal cases and whether documents should be accessible to the public or not. At this time, there is no criminal case pending. Second, Crim. P. Rule 55.1(7) in no way states a court can change a dismissal without prejudice to a dismissal with prejudice at a date certain. Under Crim. P. Rule 55.1(7), if a court were to deny public access to a court record, then it must set a date certain that the order would expire and the documents be made available to the public. Ultimately, the only limitation on whether the People can file charges is whether we can prove a case beyond a reasonable doubt and C.R.S. 16-5-401.
5. The defense appears to want to pick and choose which documents are made public and which are not, but there is no provision that allows for that after a case is dismissed. Under C.R.S. 24-72-705, either the whole case is sealed or none of it. If the whole case is sealed, then the public has access to none of the documents and the People and defense cannot talk about the case at all. Presumably if either party were to publicly talk about a sealed case, it would be grounds for contempt. If the whole case is not sealed, then all documents associated with the case are available to the public.

6. The defense has cited no cases or statutes that allow the Court to decide a substantive motion on a dismissed case. They have advocated to the Court to expand Crim. P. Rule 55.1(7) far beyond its scope, again without citing any cases or statutes. There are cases and statutes that address what the Court can decide after a case is dismissed. None of what the defense asks can be decided by the Court and therefore their Motion should be denied.

WHEREFORE, the People respectfully ask this Court to deny the defense Motion to Stay.

Respectfully submitted this 18th day of April, 2023.

Respectfully submitted,
LINDA STANLEY
11th Judicial District Attorney
/s/ Mark Hurlbert
Mark Hurlbert, #24606
Deputy District Attorney

CERTIFICATE OF SERVICE

I certify that on April 18, 2023 a true and correct copy of the foregoing Motion was served via Colorado Courts E-Filing on all parties who appear of record and have entered their appearance herein according to Colorado Courts E-Filing.

By: /s/ Mark Hurlbert